

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA Plumber Apprentice	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

I have read Notice 441 and am requesting:

Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
 Delay based on an on-going transaction
 90 day delay

For IRS Use Only:

Facts of Case

The firm is in the business of providing plumbing services. The worker was engaged as a plumber's helper. The worker received a 2017 Form 1099-MISC for his services and continued his services into 2018 as well. There was no written agreement.

The firm provided plumbing instructions as the worker did what he told and when. The worker showed up to the office and went with owner to the jobs; the firm noted that the worker was given work assignments when he was needed, Monday through Friday. Both parties agreed that the firm determined the methods by which the assignments were performed and would be contacted if any issues or problems arose. There were no required reports. The worker noted that he worked starting in the morning with an hour for lunch and left late in the afternoon. He worked at customers' locations for about eight hours a day. There were no meetings. Both parties agreed that the worker was to provide the services personally with only the firm hiring and paying any substitutes.

Both the firm and the worker agreed that the firm provided the tools, vehicle, pipe, and everything else needed to provide plumbing services. The firm noted that the worker paid a lump sum per week with no taxes withheld. The worker noted that he was paid an hourly rate. Both parties agreed that the worker had no other economic risk. Both agreed that the customer paid the firm and that the firm established the level of payment for services.

Both the firm and the worker agreed that there were no benefits though the worker mentioned a bonus and paid holidays. Either party could terminate the relationship without incurring a liability. The worker did not perform similar services for others. Both parties agreed that the worker is an employee. The relationship has not ended.

Analysis

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. The relationship of the worker and the business must be examined. Facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship should be considered. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker had to work under the supervision of a dentist as she was a dental hygienist. The firm engaged the worker only when her services were needed to fill-in for the regular staff hygienists. The worker worked when she was available, called, and agreed to work. The firm obtained and scheduled the patients. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control. Another element showing the firm's right to control the worker was the fact that the worker worked at the firm's location. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. The worker was to personally provide the services which indicated that the firm cared about the methods of how the work was performed as well as the results, supporting an employer-employee relationship.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. It was the firm that had the investment in the facility and the equipment. The worker simply received an hourly rate of pay and had no other economic risk. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. There were no benefits and there was no written agreement. The worker was engaged as a dental hygienist providing her services for the firm's dental practice. When doing so, the worker was not engaged in an separate business enterprise, nor could she be. Her services instead were essential to the firm's continuing operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

It is acknowledged that the worker worked for others during the same period of time. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. However, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. In this case, the worker was required to work under a licensed dentist even if a temporary position.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee and not an independent contractor operating a trade or business.

There is no difference for federal income tax withholding, Federal Insurance Contributions Act (FICA), and Federal Unemployment Tax Act (FUTA) between full-time employees and part-time employees and employees hired for short time periods. Under these specific circumstances, the same direction and control the firm had over full-time workers also existed for part-time/temporary workers as well.

Please see Publication 4341 for guidance and instructions for firm compliance.